

(1997) 08 MAD CK 0001

In the Madras High Court

Case No : T.C. No. 544 of 1985 (Revision No. 200 of 1985)

State of Tamil Nadu

APPELLANT

Vs

Srinath Pharma

RESPONDENT

Date of Decision : 07-08-1997

Acts Referred:

Central Sales Tax Act, 1956 — Section 10, 10A, 8(2)

Citation : (1997) 08 MAD CK 0001

Hon'ble Judges : N.V. Balasubramanian, J; M.S. Janarthanam, J

Bench : Division Bench

Advocate : K. Raviraja Pandiam, Additional Government Pleader Taxes, for the Appellant;

Judgement

Janarthanam, J.—This present action had been resorted to, to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal, Second

Additional Bench, Madras 600 104 (for short "the Tribunal") dated April 30, 1984 and passed in Tribunal Appeal No. 1620 of 1982.

2. Tvl. Srinath Pharma, No. 14, Ravanaia Street, Madras-3, are registered dealers under the Central Sales Tax Act, 1956 (Act No. 74 of 1956)

(for short, "the CST Act"). A certificate of registration was granted in their favour to purchase "ayurvedic", "allopathic drugs and medicines", by

using "C" forms. But, later on, they purchased "rubber bags", "plastic tubes" and "glass syringes" to the value of Rs. 29,785.90 by using "C" forms.

They did not apply before the competent authority for the inclusion of those goods in the certificate of registration, until they were detected by the

department.

3. Thus, they misused the certificate of registration granted to them under the CST Act towards the purchases of those materials, to which they

were not entitled. Consequently, they violated section 10(b) of the CST Act and for such violation, penalty, being one and a half times of the taxes,

which could have been levied under sub-section (2) of section 8 of the said Act in respect of the sale to them of the goods, as if the sale had been a

sale falling under the said sub-section.

4. The assessing officer - the Deputy Commercial Tax Officer, Moore Maker Assessment Circle, Madras-1, therefore proposed to impose a

penalty of Rs. 4,077, being the one and a half times of the tax due on the total purchase of Rs 29,785.90 at different rates of taxation made u/s 10-

A of the CST Act.

5. To a notice issued to the dealers inviting objections, if any, to the abovesaid proposals, they replied stating that they sought permission to deal

with surgical goods, along with the monthly return sent for the month of February, 1981. But, they admitted that they did not send the certificate of

registration for endorsement, as they were unaware of the rules. Further, they also stated that the sales tax had been paid promptly and prayed that

they were not in a position to pay the penalty and requested to be excused for the mistake committed.

6. Later on, they, it is said, forwarded a letter dated March 25, 1981 through post for inclusion of those items in the certificate of registration. The

letter so sent, it is said, did not reach the department. No tangible materials had been placed for the proof of despatch of the said letter. However,

a copy of the letter had been placed for consideration.

7. The assessing officer was of the view that those explanations were the outcome of the afterthought bearing on the issue. They admitted in the

earlier reply itself that they were not aware of the rules. They wanted to escape from the liability of penalty, merely stating that an intimation had

been sent to the competent authority. Even in the copy of the said letter, they requested permission to deal in surgical goods. This clearly proved

beyond doubt that the dealers had not applied earlier, until it was detected by the department.

8. The assessing officer, placing reliance upon the case of The Coimbatore District Central Co-Operative Supply and Marketing Society Ltd. Vs.

The State of Tamil Nadu, said that if there was a violation, there is no question of violation being technical or otherwise. He would further say that

they, in the instant case, misused the certificates of registration granted to them under the CST Act towards the purchase of surgical goods, to

which they were not entitled. Thus, they violated section 10(b), punishable u/s 10-A of the CST Act. The levy of penalty is therefore sustainable in

law and consequently, confirmed the proposals for levy of penalty, in lieu of prosecution u/s 10-A of the CST Act and issued a demand notice

therefore for Rs. 4,077.

9. The aggrieved assessee-dealers filed an appeal before the Appellate Assistant Commissioner (C.T.) III, Madras-1, which was taken on file as

AP. CST No. 149/81. The Appellate Assistant Commissioner recorded a finding that the assessing officer is correct in levying the penalty u/s 10-

A of the CST Act.

10. As regards the quantum of penalty, he would say, the assessing officer levied penalty at one and a half time of the tax due on the turnover of

Rs. 29,785.90. They have to pay tax of Rs. 2,978.59, if they had not issued ""C"" forms. By the issuance of ""C"" forms, they had paid only Rs.

1,191.41 as sales tax at 4 per cent. Thus, they gained an advantage of Rs. 1,787.15 by issue of ""C"" forms. Therefore, it is but proper, he would

say, to levy penalty equivalent to the monetary advantage gained by the dealers. Accordingly, the penalty was reduced to Rs. 1,787.15 or Rs.

1,787 in a round sum.

11. With the above modification, the appeal was dismissed.

12. The matter did not stop there. It was agitated further. The assessee filed an appeal before the Tribunal. It was taken on its file in Tribunal

Appeal No. 1680 of 1982.

13. The Tribunal, after hearing the arguments on both sides and a perusal of the connected records, allowed the appeal by setting aside the order

of the Appellate Assistant Commissioner (C.T.) III, Madras-1. The reasoning or rationale for the order gets reflected in paragraphs 7 and 8 thus :

7. The case of the appellants is that under a bona fide impression the appellants had purchased the surgical items. Since these items comes under

"class or classes" of goods dealt with by the appellants the appellants have not violated the provisions of the Act. In order to support, the counsel

for the appellants invited our attention to the decision of the Main Bench in T.A. Nos. 1711, 1712, 1843 of 1982 dated March 5, 1984 wherein

the main Bench has held as follows :

In T.A. No. 101 of 1980 dated November 20, 1980 (Tvl. United India Roller Flour Mills Ltd. v. State), the Tribunal had held that even though the

container and packing materials are not mentioned in the registration certificate, as the packing materials were used for packing of the goods or

classes of goods specified in the certificate of registration, the purchase did not amount to misuse of registration certificate. Therefore, the penalty is

not attracted in respect of purchase by appellants the items of chemicals, tin-containers and packing materials.

Considering this judgment of the main Bench, I accept the contention of the appellants, that the appellants have purchased these items under a

bona fide impression that these items comes under "class or classes of goods". These items were included in the certificate of registration on July

14, 1981. The appellants have requested for inclusion of the surgical goods, i.e., rubber bags, plastic tubes and and glass syringes and plastic set in

the registration certificates as per their letter dated July 13, 1981. A perusal of the registration certificate shows that these items were included in

the certificate with effect from July 14, 1981, i.e., in the year of assessment itself. In view of the discussions held above, I hold that the penalty is

not attracted and the levy of penalty is deleted.

8. In the result, the appeal is allowed.

14. It has been brought to our notice by learned Additional Government Pleader (Taxes) that Appeal No. CST 101 of 1979 dated December 15,

1979 on the file of the Appellate Assistant Commissioner (C.T.), I, Madras was the subject-matter of revision before this Court in Tax Case (R)

No. 426 of 1981. The said revision has been disposed of by a Division Bench of this Court, by order dated January 18, 1991 and a copy of the

said revision had been placed for our perusal. The operative portion of the order in the said revision, as reflected in paragraph 12 therein reads as

under :

12. In the present case, there is no such finding at all and therefore, there is no scope for levy of penalty and therefore, the conclusion reached by

the Tribunal is correct; though for a different reason as stated above. Hence this tax revision is dismissed However, in the circumstances of the

case, no costs.

15. The question that now crops up for consideration is as to :

Whether, on the facts and in the circumstances of the case, the assessee, being a registered dealer could be construed to have made "false

representation" while purchasing any class of goods of such class were covered by his certificate of registration ?

16. The question relatable to the issue of C forms, in the purchase of goods not included in the certificate of registration had always been rather

moot or vexed, in the sense of many a decision emerging from the superior courts of jurisdiction - this Court, other High Courts and the apex

Court of this country. All the decisions rendered happened to consider the purport, import and intendment of the expression ""falsely represents

used in section 10(b) of the CST Act. There are two shades of views available in the courts of co-ordinate jurisdiction, that is to say, High Courts.

Once view is, the mens rea prescribed in the said section must be established by the department and a finding has to be recorded therefor, in a

clinching fashion, before ever the penalty was sought to be imposed on the offending assessee and if there was any bona fide belief on the part of

the offending assessee to purchase the goods not covered by the certificate of registration, then in such an eventuality, penal consequences cannot

at all flow for violation or refraction of the salient and sanguine provisions adumbrated u/s 10(b), punishable u/s 10-A of the CST Act.

17. Opposed to such a view, there is one other view, according to which, the mens rea prescribed u/s 10(b) of the CST Act cannot at all be

equated to that of a mens rea prescribed in criminal statutes and a liberal interpretation has to be given to the mens rea element prescribed in the

said section, particularly in the matter of construction of taxing statutes relatable to tax delinquency and in such matters, proper it is for the court to

construe that mens rea prescribed therein with the knowledge attributed to the act at the time when the act was committed and nothing at all be

proved and what is required to be established in such circumstances is that there was a simpliciter ""false representation"" divorced of the criminal

intent and if from the mere falsity of the representation, penalty had been imposed, it would definitely be justified, in the sense of satisfying the

establishment of the mens rea element prescribed therein.

18. Apart from the two hues of views, as projected above, if one, with due care,

caution and circumspection, peruses section 10(b) of the CST

Act, it will be abundantly clear that the crucial date of representation is the date on which the goods not covered by the certificate of registration

were purchased and not the date on which C form declarations were issued.

19. (a) In T.C. (R) No. 426 of 1981, wheat and wheat products were specified in the certificate of registration issued to the dealers therein. The

dealers manufactured wheat products, like ""balhar"" out of wheat belonging to the Food Corporation of India (FCI). The wheat products were sold

by them packed in polythene bags. They purchased polythene granules and manufactures polythene bags. The polythene bags so manufactured by

them were utilised for packing wheat products like ""balhar"", they manufactured out of wheat belonging to FCI. They purchased polythene granules,

which were not specified in the certificate of registration, on the basis of C forms.

(b) The assessing authority detected the misuse of C forms by the holder for purchase of polythene granules and therefore, in the penalty

proceedings initiated against the assessee-dealer, a specified amount of penalty was imposed upon them for contravention of section 10(b), in lieu

of prosecution u/s 10-A of the CST Act, of course, after complying with the requisite procedure prescribed therefor.

20. It appears, the imposition of penalty, had been agitated up to the level of the Tribunal and this Court, after taking into consideration the hues of

views projected by this Court and other High Courts, in many a decision, ultimately came to the conclusion that in order to levy penalty for the

commission of an offence u/s 10(b) of the CST Act, there must be definite finding regarding ""false representation"" or existence of mens rea and that

in the absence of proof of mens rea, a person cannot be penalised for the said offence and so saying, this Court reached the conclusion reached by

the Tribunal, though for different reasons and consequently dismissed the revision.

21. By drawing our attention to this unreported decision as above, by learned Additional Government Pleader (Taxes) in all fairness, we are to

infer though not expressly projected by the said learned Additional Government Pleader, that the instant revision has also to fall to the ground, in

the sense of inviting dismissal.

22. We are able to come across a subsequent division Bench decision of this

268.

(a) In that case, the certificate of registration granted to the appellant-dealer under the CST Act authorised it to purchase ""machinery and electrical goods only"". The appellant-dealer purchased ball-bearings on the basis of C forms. On the ground that ball-bearings were not covered by the appellant's certificate of registration, penalty was imposed on the appellant u/s 10-A for an offence u/s 10(b) of the CST Act.

(b) In the context of such a factual matrix, a division Bench of this Court was called upon to construe and interpret the phraseology ""falsely represents"", as has been couched in section 10(b) of the CST Act whilst prescribing the element of mens rea for the act of purchasing goods.

(c) Dr. A. S. Anand, C.J., (as he then was), spoke for the Bench [Vijaya Electricals Vs. State of Tamil Nadu, and His Lordship took into

consideration catena of cases available on the subject and finally answered the moot or vexed question relatable to the mens rea element

prescribed in section 10(b) of the CST Act by entering into a scintillating discussion in paragraphs 16 to 18 which read as under (pages 276 to

279 of 82 STC) :

16. Section 10(b) of the Act postulates that if any registered dealer falsely represents when purchasing any class of goods that such goods are

covered by the certificate of registration, he is liable to be punished to the extent contained in the section itself. Section 10-A of the Act

contemplates that if any person is found guilty of an offence under clause (b) of section 10, the competent authority may, after following the

procedure prescribed in the section in lieu of prosecution, impose upon him by way of penalty a sum not exceeding one and a half times the tax

which would have been levied in respect of the sale to him of the goods, if the sale fell within section 8(2) of the Act. It is, thus, clear that what is

imposed by section 10-A of the Act is a civil obligation while what is contemplated u/s 10(b) is a "sentence". The creation of an offence by a

statute proceeds on the assumption that the society suffers injury by the act or omission of the defaulter and in most cases of criminal liability, the

intention of the Legislature is that the penalty should serve as a deterrent to discourage repetition of an offence. In the case of proceedings u/s 10-

A of the Act, however, it seems that the intention of the Legislature is to emphasise the fact of loss of revenue and to provide for remedy for such a loss. This becomes evident from the terms in which the penalty falls to be measured u/s 10-A of the Act itself. Therefore, unless there is something in the language of the statute indicating the need to also establish the element of mens rea in proceedings u/s 10-A of the Act, it would be generally sufficient to prove that the default in complying with the statute had occurred in the manner envisaged by section 10(b) of the Act. In our opinion, there is nothing in section 10-A which requires that mens rea must be proved before penalty can be levied under that provision if on facts, it is found that the assessee had made a "false representations. It is the making of a "false representation", which is, indeed the sine qua non for invoking the provisions of section 10(b) of the Act. Once a finding is recorded by the competent authority that the assessee has made a false representation, that would clearly attract the provisions of section 10(b) of the Act and, in our opinion, no further finding is required that the assessee had also the mens rea. The statute does not contemplate that. Even otherwise, mens rea is a state of mind. Under the criminal law, mens rea is considered as the "guilty intention", but when it is relatable to tax delinquency, which is a civil obligation, it implies a "blameworthy conduct". Therefore, unlike in criminal cases, where it is essential for the prosecution to establish that the accused had a guilty intention or, in other words, the requisite mens rea before recording conviction, the obligation on the part of the Revenue, in cases of tax delinquency, would be discharged where it can be shown that the "blameworthy conduct" of the assessee was established, like by recording a finding that the assessee had made a "false representation" and the like. The recording of such a finding by itself shows the establishment of the blameworthy conduct, which would be the establishment of mens rea to the limited extent applicable to civil obligations. Mens rea can be established either by direct evidence or by drawing inferences from the established facts and circumstances of a given case. To the extent that mens rea is the blameworthy conduct, it goes without saying that the making of a "false representation", which has been made an offence u/s 10(b) of the Act, would bring the case of the defaulting party within the ambit of that section. The application of the doctrine of mens rea in cases of tax delinquency has been nicely summed up in

"Corpus Juris Secundum", Volume 85, at page 580 in paragraph 1023, where it is stated thus :

"A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws."

We are in agreement with the above statement. Therefore, we hold, to the limited extent that mens rea has application in tax default cases, it would

stand established, if the conduct of the assessee is found to be blameworthy, within the meaning of the particular provision of the given tax statute.

Where a finding is recorded on facts about the existence of the blameworthy conduct, which the Legislature has treated as an offence or a default

on the part of the assessee, like the making of a "false representation", it would attract the provisions of section 10(b) of the Act and no further

finding would be required to be recorded about the existence of mens rea on the part of the assessee, as it would be inherently included in the

earlier finding. We, therefore cannot accept the proposition that even if a finding has been recorded on facts by the competent authorities that an

assessee has made a "false representation", as contemplated by section 10(b) of the Act, in the absence of an additional finding that the assessee

also had the requisite mens rea, he cannot be penalised u/s 10(b) of the Act. The argument has no basis and is absolutely far-fetched.

17. Of course, in the judgments relied upon by the learned counsel for the assessee, which have been dealt with by us elsewhere, it has been stated

that mens rea is an essential ingredient to establish an offence u/s 10(b) of the Act and in each one of those cases, the penalty proceedings were set

aside. We are, however, relieved of the necessity to deal with those judgments in extenso for, in each one of those cases, it was found that the

statutory had not returned any finding either as regards the existence of mens rea or even to the extent that the assesses in those cases could be

said to have made any "false representation". Since the making of a false representation, whether expressly or impliedly, is the sine qua non for

invoking the provisions of section 10(b) of the Act, the absence of a finding from the statutory authority in that behalf would necessarily lead to the

conclusion that the provisions of section 10(b) of the Act are not attracted. None of those judgments is any authority for the proposition that in

addition to recording a finding that the assessee had made a "false representation", an additional finding to the effect that the assessee also had the requisite mens rea, is necessary to attract the provisions of section 10(b) of the Act. On the other hand, in our opinion, the judgment reported in

The Coimbatore District Central Co-Operative Supply and Marketing Society Ltd. Vs. The State of Tamil Nadu, , which we have dealt with

elsewhere and which has been relied upon by the learned Government Advocate (Taxes), applies with all force to the facts and circumstances of

the present case.

18. Coming now to the case on hand, the Deputy Commercial Tax Officer had negatived the plea of the assessee that it had acted bona fide. It

was found by the assessing authority that "ball- bearings" could not, by any stretch of imagination, be considered to have been included in the

goods specified in the certificate of registration. A careful reading of the goods specified in the certificate of registration unmistakably shows that

"ball- bearings" could not be said to be included in the certificate, as they are distinctly separate goods. The dealer, who has been dealing with

these commodities for a long time must be presumed to know the difference between the machinery and bell-bearings. If, knowing as to what was

contained in the certificate of registration, and there is nothing on record to show that the assessee had no such knowledge, the assessee used the

C form declarations to purchase ball-bearings, undoubtedly, the representation made by the assessee was "false". When a representation is made

intentionally or knowingly that it is not true, that representation would, unmistakably, be a "false representations". With a view to save himself from

the penal consequences envisaged by section 10(b) of the Act, the assessee took the plea of acting "bona fide". What he did in fact, was to raise

the plea of acting "good faith". Under the Indian Penal Code, section 52 defines "good faith" and states that nothing is said to be done or believed

in good faith, which is done or believed without due care and attention. It is not the case of the assessee that it had taken due care and paid due

attention to study the entry in the certificate of registration before making purchases on the basis of the C forms. As a matter of fact, the subsequent

conduct of the assessee in seeking to get included in the certificate of registration, a number of other goods, including "ball-bearings", with effect

from May 18, 1980, as is apparent from the amendment made to the certificate of registration by the Deputy Commercial Tax Officer, dated July

5, 1980 (available at page 29 of the typed set), goes to show that the assessee could not be said to have earlier acted in good faith when it

purchased the ball-bearings on furnishing C form declarations. Though there is some variance about the concept of "good faith" in criminal law

from that under the civil law, but we find that under the Madras General Clauses Act also the expression "good faith" has been defined in the same

manner as in the Indian Penal Code, unlike in the Central General Clauses Act of 1897 and it insists on due care and attention as an indispensable

element for acting in "good faith". In the facts and circumstances of this case, the assessing authority rightly found, on facts, that the representation

made by the assessee at the time of purchasing ball-bearings was a "false representation" and that the plea of acting "bona fide" was unsustainable.

The Joint Commissioner, in the suo motu revision proceedings also concurred with the findings of fact and found that since there are separate

entries in the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, for machinery and ball-bearing, the two articles were separate and

distinct and not the same and no assessee, who had acted with due care and attention, could ever construe that "ball-bearings" were included in

the certificate. The Joint Commissioner, therefore, found on facts that the assessee had not made a truthful representation, which was an equation

of false representation and, on the basis of that finding of fact, while rejecting the plea of bona fides, the assessee was held to have acted mala fide

and thereby to have committed an offence contemplated u/s 10(b) of the Act by the making of "false representations". Since clear findings have

been recorded on the facts of the case to the effect that the representation made by the assessee was "false representation" and that it had been

knowingly made by the assessee, the Joint Commissioner as well as the assessing authority were justified in holding that the assessee had

committed an offence punishable u/s 10(b) of the Act. The findings have been recorded after careful application of mind and are based on the

relevant material available on the record. In the facts and circumstances of the case, the plea of bona fides set out by the assessee was totally

misconceived and was rightly rejected. Since the finding recorded, on facts, by the authorities is based on the material on record and is neither

perverse nor otherwise unreasonable, the conclusion becomes irresistible that the assessee had made a false representation and committed an

offence u/s 10(b) of the Act. The finding to the contrary recorded by the first appellate authority is based on surmised and conjectures and cannot

be prepared over the findings recorded by the assessing authority as well as the Joint Commissioner regarding the making of the "false

representation" by the assessee to secure a benefit to which it actually was not entitled.

23. Pertinent it is to observe at this juncture, that the cases referred to by a Division Bench of this Court in an unreported decision in T.C. No. 426

of 1981 had also been referred to in the case of Vijaya Electricals Vs. State of Tamil Nadu, .

24. We may now say in a nut-shell the rule laid down in Vijaya Electricals Vs. State of Tamil Nadu, relatable to the prescription of mens rea.

There is nothing in section 10-A of the CST Act, which requires that mens rea must be proved before penalty can be levied under that provision, if

on facts, it is found that the assessee has made a "false representation". Once a finding is recorded by the competent authority that the assessee has

made a "false representation", that would clearly attract the provisions of section 10(b) of the CST Act and no further finding is required that the

assessee had also the mens rea.

25. Under the criminal law, mens rea is considered as the "guilty intention", but when it is relatable to tax delinquency, which is a civil obligation, it

implies a "blameworthy conduct". The recording of a finding that the assessee had made a false representation by itself shows the establishment of

the blameworthy conduct, which would be the establishment of mens rea to the limited extent applicable to civil obligations.

26. The ratio or dictum laid down in Vijaya Electricals Vs. State of Tamil Nadu, is applicable on all fours to the facts of the instant case To

recapitulate, in the instant case, the assessee-dealers were permitted to purchase "ayurvedic, allopathic drugs and medicines" by issue of C form

and what they have done is that they purchased "rubber bags, plastic tubes and glass syringes" by the issuance of C forms to the value of Rs.

29,786. Admittedly, the assessee-dealers have been dealing in the goods specified in the certificate of registration for quite long. It is only they,

who made an application for registration under the CST Act and it is only they, who wanted the goods of a particular description to be included in

the certificate registration. In such circumstances, it cannot at all be stated that they were unaware of what had been specified in the certificate of

registration. The goods purchased by them, on the basis of C forms, as already referred to, can, by no stretch of imagination, be construed as

goods of the class specified in the certificate of registration. On the contra, those goods are altogether different and distinct goods, not having any

sort of a connection with the ones specified in the certificate of registration.

27. One other intriguing factor to be taken note of here is that they applied for inclusion of those goods in the certificate of registration only after

detection of such purchases by the department. Further, the very act of making an application for inclusion of those goods in the certificate of

registration shows their guilty mind that but for the inclusion of those goods in the certificate of registration, they were not entitled to purchase such

goods on the basis of issuance of C forms. The one and only inevitable conclusion to be reached, in such circumstances, is that the conclusion

arrived at by the assessing authority and laterly confirmed by the first appellate authority that the act on the part of the assessee-dealers in

purchasing ""rubber bags, plastic tubes and glass syringes"" on the basis of C forms is a violation or refraction or section 10(b) of the CST Act

cannot at all be stated to be unjustified.

28. For the reasons, as above, it goes without saying that the order of the Tribunal setting aside the order of the Appellate Assistant Commissioner

(CT) III, Madras deserves to be set aside and the order of the said Appellate Assistant Commissioner requires to be restored.

29. In fine, the Tax Case (Revision) No. 544 of 1985 is allowed. The order of the Tribunal is set aside and the order of the Appellate Assistant

Commissioner (CT) III, Madras is ordered to be restored. There shall, however, be no order, in the circumstances, as to costs.

30. Petition allowed.